

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

ORIGINAL

76-7556

United States Court of Appeals
FOR THE SECOND CIRCUIT

MARINE CARRIERS CORPORATION,

Plaintiff-Appellee

versus

DIRECTOR GENERAL OF INDIA SUPPLY MISSION
and REGIONAL DIRECTOR OF FOOD—WESTERN
REGION,

Defendants-Appellants.

BRIEF FOR PLAINTIFF-APPELLEE

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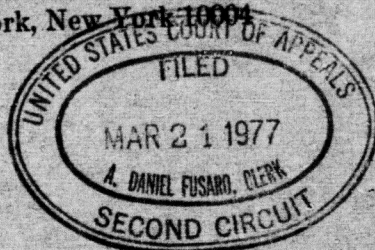
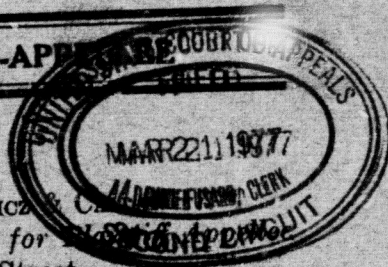


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Statement

The facts in this case can be simply stated. While loading grain at Beaumont, Texas, plaintiff's vessel underwent repairs which could not be completed before the berth was needed by others. Pursuant to a Coast Guard directive, she proceeded toward an anchorage where final repairs could be made. Upon leaving the protection of a sea jetty, fresh winds and currents suddenly pushed the vessel towards shore. The inadequate efforts of an assisting tug to check the movement only resulted in a parted tow line and the "Avenger" went aground.

The expense of refloating was substantial and a General Average was declared and published. Suit was brought to recover defendants' agreed share of this expense and resulted in the judgment entered below. The trial court found "that the ship went aground because of negligence

or faulty navigation by the pilot, tug or captain" (23a), thereby establishing a contractual right to recover. After thoughtful reflection, defendant has now limited the appeal to a single claim of error, namely, that the grounding was due to a failure of the ship to have another chart on board. The swift and sure answer is that the other chart would not have made the slightest difference.

I

There is no designation of Sabine Anchorage on any official chart.

Beaumont is an inland port connected to the Gulf of Mexico by a system of rivers and canals about 50 miles long. Just off the seaward entrance is an anchorage area designated on all official charts as "Fairway Anchorage." Ten miles farther inland there is an area adjacent to the main ship channel, designated on Chart No. 517 (325a) as "Anchorage Area." It carries no other name. That anchorage does not appear on Chart No. 1279 (64a), an up to date chart which was on board the "Avenger" when the grounding occurred.

Appellant argues that if Chart No. 517, a more detailed chart, had been on board, the ship would have gone to the closer anchorage and thereby avoided the casualty. The fallacy of this conclusion is obvious and clear. The ship was ordered to the "Sabine Anchorage" and there is no such designation on either chart.

II

There must be a relevant causal relation to the alleged unseaworthiness and there is none.

Even if we assume, *arguendo*, that the absent chart had relevance (which it does not), that alleged unseaworthiness would not change the result.

In *Director General of India Supply Mission v. SS Maru*, 459 F. 2d 1370 (CA 2, 1972), the ship had only an outdated chart but this court stated:

" . . . Where the carrier has brought itself, as in this case, within the excepted peril of negligent navigation the burden then shifts to the cargo owner to establish that the unseaworthiness caused the damages sought. 'Therefore, once the carrier has brought forth evidence establishing the defense of error in management the burden is on the shipper to show that the ship was unseaworthy and that the damage was caused by such unseaworthiness.' *Firestone Synthetic Fibers Co. v. M/S Black Heron*, 324 F. 2d 835, 837 (2d Cir. 1963)."

(p. 1372)

The owner of the "Maru" was exonerated because the master would not have used the chart even if it had been on board.

In *Director General of India Supply Mission v. SS Janet Quinn*, 1972 A.M.C. 1227, not officially reported, the ship again had an outdated chart, and again it was exonerated because its absence was not causally connected to the accident.

"It is established law that there must be a causal connection between the loss sustained and the unseaworthy condition claimed. If a ship is found to be unseaworthy and due diligence has not been exercised to prevent the unseaworthy condition a shipowner would not be liable unless there is a causal connection between the loss and the unseaworthy condition. *American Tobacco Company v. Goulandris*, 1959 A.M.C. 1462, 173 F.Supp. 140 (SDNY, 1969); *Hartford & New York Transportation Co. v. Rogers & Hubbard Company*, 1930 A.M.C. 521, 40 F. (2d) 954 (D.C. Conn., 1930); *Temple Bar*, 1942 A.M.C. 1125, 45 F.Supp 608 (D.Md., 1942), affirmed, 1943 A.M.C. 939, 137 F.(2d) 293 (4 Cir. 1943)." (p. 1227)

Here, the absence of Chart No. 517 had no causal connection because it did not identify or locate "Sabine Anchorage". Thus, the trial court's finding that the grounding was due entirely to navigational error is fully confirmed.

III

The ship went where the master and pilot intended her to go.

In subsequent Coast Guard hearings, it developed that the inner "Anchorage Area" was also known locally as the Sabine Anchorage, apparently because it was in the vicinity of Sabine Pass. This local information was not within the knowledge of the master, nor can he be charged with such knowledge. The controlling point is that he believed he had been ordered to the Fairway Anchorage, which he knew as the Sabine Anchorage, and he proceeded there, confident that he was following instructions (172a, 173a, 183a).

The local pilot, presumably more knowledgeable concerning local nomenclature, was in agreement. He had been told the ship was going to the Sabine Anchorage and he proceeded toward the Fairway, even though he was personally aware of the "Anchorage Area" which they passed en route (185a, 186a, 223a). Thus, the trial court properly found that there was no unseaworthiness but, at most, a misunderstanding.

"There was some misunderstanding by the captain as to location of Sabine Anchorage, but his unchallenged deposition testimony was that the location to which he understood the ship was to be shifted to await delivery of the needed part to complete the ship's repairs was in the Gulf beyond the buoys. This is officially designated Fairway Anchorage." (20a)

* * *

"The captain and the pilot (whatever the correct terminology as to the Sabine Anchorage) believed they had been ordered to move to anchorage in the Gulf. There clearly was no deliberate disobedience of the Coast Guard's orders." (22a)

These findings by the trial court are fully supported by the evidence and in any event fall without the "clearly erroneous" rule of *McAllister v. United States*, 348 U.S. 19.

Appellant has referred to this Court's recent decision in *American Smelting & Refining Co. v. SS Irish Spruce* (opinion filed Jan. 17, 1977), where a ship grounded through navigational error. The distinguishing feature of that case, says appellant, is that the information in the light list which the ship did not have, was already on board in another publication. Thus, there was no concurrent cause due to unseaworthiness.

The parallel is an apt one. The master here was aware of the inner anchorage. Before the ship had reached the area, the pilot informed him of its availability but recommended against its use (223a). The master chose not to use it.

Conclusion

The only issues presented for review are listed on Page 2 of appellant's brief. The answers are clear.

1. The "Avenger" was not unseaworthy because it lacked Chart No. 512; that chart did not show a "Sabine Anchorage."

2. Even if the "Avenger" was unseaworthy in this respect, it was not a concurring cause of the grounding because the master had actual knowledge of the other anchorage area.

3. Due diligence had been exercised to obtain more detailed charts (173a, 174a).

The decision of the court below should be affirmed.

Respectfully submitted,

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Due and timely service of *Two* copies
of the within *Brief* is hereby
admitted this *Monday* of *March* 1977

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Attorneys for *Appellants*

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BAKER, NELSON, WILLIAMS & MITCHELL

Eileen Tamala